

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JOSE HERNANDEZ-CUELLAR,	§	
#26608-078	§	
	§	CIVIL ACTION NO. 4:25cv485
VS.	§	CRIMINAL ACTION NO. 4:16cr111(1)
	§	
UNITED STATES OF AMERICA	§	

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

This case was referred to United States Magistrate Judge Bill Davis, who issued a Report and Recommendation (Dkt. #3) (“the Report”) recommending that the Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 be dismissed without prejudice to Movant’s ability to file his motion if he receives authorization from the United States Court of Appeals for the Fifth Circuit. Movant filed objections. (Dkt. #4).

In the objections, Movant appears to argue that the Magistrate Judge erred in concluding that his § 2255 motion is successive and requires authorization from the Fifth Circuit before filing. But the objections do not present any cogent argument suggesting error in the Magistrate Judge’s analysis. Notably, Movant does not dispute that his prior § 2255 motion was denied and dismissed on the merits. As a result, the current § 2255 motion is successive. Movant has not provided documentation showing that he has received authorization from the Fifth Circuit to file a successive § 2255 motion. Movant’s objections are without merit.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Movant to the Report, the Court concludes that

the findings and conclusions of the Magistrate Judge are correct and adopts the same as the findings and conclusions of the Court.

It is therefore **ORDERED** that the Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 is **DISMISSED** without prejudice to Movant's ability to file his motion if he receives authorization from the Fifth Circuit. It is further **ORDERED** that a certificate of appealability is **DENIED** with such denial referring solely to an appeal of the decision in this case and likewise having no effect upon Movant's right to seek permission from the Fifth Circuit to file a successive petition. All motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this 1st day of August, 2025.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE